

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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Frederick Burton, Individually )  
And On Behalf of All Others Similarly Situated,) Case No. 1:08-cv-03037-LAP  
Plaintiff, )  
)  
v. )  
)  
Merrill Lynch & Co., Inc. and Merrill Lynch, )  
Pierce, Fenner & Smith Inc., )  
Defendants. )  
\_\_\_\_\_  
Richard Stanton (as Trustee for Ashley )  
Stanton), On Behalf of All Others Similarly ) Case No. 1:08-cv-03054-LAP  
Situated, )  
Plaintiff, )  
v. )  
Merrill Lynch & Co., Inc. and Merrill Lynch, )  
Pierce, Fenner & Smith Inc., )  
Defendants. )  
\_\_\_\_\_

**REPLY IN SUPPORT OF THE MOTION OF GERALD WENDEL AND  
ROBERT BERZIN FOR CONSOLIDATION OF ACTIONS,  
APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF  
SELECTION OF COUNSEL**

Class members Gerald Wendel and Robert Berzin (collectively, “Movants”), respectfully submit this reply in further support of their motion for consolidation of the above-captioned actions, appointment as Lead Plaintiff, and approval of their selection of counsel.

On May 27, 2008, Movants timely filed a motion, pursuant to Fed. R. Civ. P. 42(a) and the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B), for consolidation of the *Burton* and *Stanton* actions, their appointment as Lead Plaintiff, and approval of their selection of counsel. *See Burton* Docket Nos. 15-17.

Movants demonstrated that the *Burton* and *Stanton* actions should be consolidated for all purposes. The cases assert the same claims under the Securities Exchange Act of 1934 against Merrill Lynch, arise out of the same course of conduct, and present common questions of law and fact. Defendants support consolidation as well. *See Burton* Docket No. 25 at 4. Accordingly, the Court should consolidate the *Burton* and *Stanton* actions.

In support of their motion for appointment as Lead Plaintiff, Movants demonstrated that they have a financial interest of \$43,000,000 in the outcome of the litigation. Named plaintiff Richard Stanton and Class members Mark Rowlands, Lester Handler, Sheila Handler and William Bora (collectively, the “Stanton Group”) filed a competing motion in which they asserted that they had an aggregate financial interest of \$2,141,684.18. *See Stanton* Docket Nos. 8-10.

On June 13, 2008, Movants filed their response to the Stanton Group’s motion for appointment as Lead Plaintiff. *See Burton* Docket Nos. 26-27. In their response, Movants demonstrated that they have the largest financial interest in the relief sought—Mr. Wendel’s interest alone exceeds \$40,000,000—and therefore, were presumed to be the “most adequate plaintiff” to represent the Class. 15 U.S.C. § 78u-4(a)(3)(B)(iii). Movants also demonstrated that they satisfy the typicality and adequacy requirements for appointment as Lead Plaintiff, as set forth in 15 U.S.C. § 78u-4(a)(3)(B)(iii), and that Mr. Berzin has standing to pursue claims on behalf of the three closely-held companies through which he purchased illiquid auction rate securities from Merrill Lynch.

The Stanton Group did not file a response to Movants' opening papers in either the *Burton* or *Stanton* actions and failed to address defendants' challenge to the amount of its purported financial interest (see *Stanton* Docket No. 25 at 6-7). Thus, the Stanton Group appears to have abandoned its motion.

Because Movants have satisfied all of the Lead Plaintiff requirements of the PSLRA and their motion is apparently no longer opposed, Movants respectfully request that this Court: (1) consolidate the *Burton* and *Stanton* actions; (2) appoint Class members Gerald Wendel and Robert Berzin, or in the alternative, appoint Mr. Wendel alone, as Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(i); and (3) approve their selection of counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

DATED: June 23, 2008

Respectfully submitted,

**GIRARD GIBBS LLP**

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**CERTIFICATE OF SERVICE**

I, Jonathan K. Levine, hereby certify that on June 23, 2008, I caused the following document(s) to be filed electronically with the United States District Court for the Southern District of New York through the Court's mandated ECF service:

- 1. REPLY IN SUPPORT OF THE MOTION OF GERALD WENDEL AND ROBERT BERZIN FOR CONSOLIDATION OF ACTIONS, APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL**

Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23<sup>th</sup> day of June, 2008 at San Francisco, California.

/S/ Jonathan K. Levine